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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. 556

IN THE MATTER OF
KORACH BROS., A LIMITED PARTNERSHIP,
Petitioner,

vs.

EARL W. CLARK, DIRECTOR OF THE DIVISION OF LIQUIDATION, DEPARTMENT OF COMMERCE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS AND BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS AND BRIEF IN SUPPORT THEREOF.

The above named Petitioner respectfully petitions this Court to issue its Writ of Certiorari to the United States Emergency Court of Appeals and alleges as follows:

1. This Petition is filed pursuant to Rule 38 of the Rules of this Court to review the final judgment of the United States Emergency Court of Appeals entered pursuant to the Opinion of said Court filed November 25, 1947, dismissing the Complaint in the case of *Korach Bros., a Limited Partnership* v. *Earl W. Clark, Director of the Division of Liquidation, Department of Commerce* (Docket No. 414

in said Court), as modified by Order of said Court dated January 2, 1948, denying Petitioner's Petition for a Rehearing.

2. This Court has jurisdiction over the subject matter of this petition pursuant to U. S. C., Title 50 App., Sec. 924(d) (Emergency Price Control Act, January 30, 1942, c. 46, 56 Stat. 23), and Sec. 240 of the Judicial Code as amended. (U. S. C. Title 28, Sec. 347.) The original opinion of the United States Emergency Court of Appeals was filed on November 29, 1947. Petitioner thereupon filed its Petition for Rehearing. On January 2, 1948, said Court modified its said original opinion and denied said Petition for Rehearing. The opinon of said Court and said modification thereof appears in the Transcript of Record submitted herewith.

Summary of the Matter Involved.

The sole matter here involved is the proper interpretation and effect of the Amendment to Section 205(e) made by the Emergency Price Control Extension Act of 1946, as follows:

> "The Administrator shall not institute or maintain any enforcement action under this subsection against any manufacturer of apparel items where the Administrator shall determine (1) that the transaction on which such proceeding is based consisted of the manufacturer's selling such an item at his published March 1942 price list prices instead of his March 1942 delivered prices, and (2) that the seller's customary pricing patterns for related apparel items would be distorted by a requirement that his ceilings be the March, 1942, delivered prices. The Administrator's determinations under this paragraph shall be subject to review by the Emergency Court of Appeals in accordance with sections 203 and 204."

The issue is further defined in that Petitioner was denied relief by the Court below upon the sole ground of the Court's interpretation of "The seller's customary pricing pattern" requirement of subsection 2 of the amendment. The issue here involved, therefore, is restricted to what did the Congress intend to require of a manufacturer of apparel items, such as Petitioner, as to a "customary pricing pattern."

Petitioner contended that the plain language of the amendment as well as its legislative history shows that what the Congress intended by a "customary pricing pattern" was a method of arriving at prices from a customary method, formula or pattern derived, as the legislative history shows, through the computation of costs in relation to an established markup or method.

The Court *sui sponte* concluded, even though no contention was made in the briefs or in the argument by anyone, that what the Congress meant was not a pricing pattern or formula at all, but only a "customary price."

Statement of the Matter Involved.

On November 28, 1945, Chester Bowles, the then Administrator of the Office of Price Administration, filed an action in the District Court of the United States for the Northern District of Illinois, Eastern Division, being Case Number 45 C 2129, known as *Bowles, Administrator* v. *Herman Korach, et al.,* Defendants (R. 11-15) praying judgment for $900,000 on account of sales by Petitioner, from February 1, 1945 to June 15, 1945, of garments in Category 22 of R. M. P. R. 287, in the price lines of $57, $60 and $66 per dozen.

On January 24, 1947, Philip B. Fleming, Administrator, Office of Temporary Controls, filed in said case number

45 C 2129, a supplemental complaint, praying for judgment for an additional $600,000, on account of sales by Petitioner for the period prior to November 10, 1946.

A paragraph was added to Section 205(e) by the Price Control Extention Act of 1946, which provided as follows:

> "The Administrator shall not institute or maintain any enforcement action under this subsection against any manufacturer of apparel items where the Administrator shall determine (1) that the transactions on which such proceeding is based consisted of the manufacturer's selling such an item at his published March 1942 price list prices instead of his March 1942 delivered prices, and (2) that the seller's customary pricing patterns for related apparel items would be distorted by a requirement that his ceilings be the March 1942 delivered prices. The Administrator's determinations under this paragraph shall be subject to review by the Emergency Court of Appeals in accordance with sections 203 and 204."

On August 21, 1946, Petitioner filed with the Office of Price Administration its Application for Relief under the amendment to Section 205(e), which application was denied by the Temporary Controls Administrator on March 28, 1946. (R. 1, 17.)

The Administrator concluded that Petitioner did not meet the conditions of the amendment upon a number of grounds:

(a) That Petitioner was not a manufacturer of apparel items within the meaning of the amendment;

(b) That Petitioner did not have a published price list;

(c) That the suit brought against Petitioner was not predicated on Petitioner's selling items at its published March 1942 price list prices instead of its March 1942 delivered prices;

(d) That Petitioner "had no customary pricing

pattern within the meaning of the Statute" (R. 130) because of variations in prime costs for style numbers in the same price lines. (R. 129.)

Thereupon Petitioner filed its Complaint in the U. S. Emergency Court of Appeals, Case No. 414. That Court in its Opinion of November 25, 1947, said:

> "We think it clear from these facts that complainant's case meets the first condition which the statute imposes upon it as a prerequisite to relief."

This condition was:

> "(1) that the transactions on which such proceeding is based consisted of the manufacturer's selling such an item at his published March 1942 price list prices instead of his March 1942 delivered prices."

However, the Court held against Petitioner on the "customary pricing pattern" issue by adopting a view neither asserted nor argued by the Administrator, as shown by the following portion of the Court's Opinion as modified by its Order of January 2, 1947:

> "We are satisfied that the complainant has failed to meet this condition of the statute. The undisputed evidence shows that the first spring offering by the complainant of misses' and junior misses' dresses at $57, $60 and $66 per dozen was made in the spring season of 1942, the first deliveries being made at the very earliest at the end of March. The *pricing pattern* to which the statute refers is the arrangement, design or outline of prices which a manufacturer has fixed and *published* for a series of related apparel items. Thus in March 1942 the complainant's published pricing pattern for misses' and junior misses' dresses was $66, $60, $57, $45, $39, $36, $30 and $24 per dozen. But so far as the prices of $66, $60 and $57 were concerned this was not a *customary pricing pattern* since those particular prices had never previously been included in the complainant's *list of prices* for such garments for a spring selling season. The fact that complainant had

offered dresses at $60 per dozen in the fall of 1941 is without significance in this connection since it is clear that in this industry dresses offered in the fall selling season for winter wear are quite different from those offered in the spring for summer use and that each of these seasonal lines has its own distinctive *pricing pattern*. (Emphasis supplied.)

"Since the *complainant's pricing* pattern in March 1942 was clearly *a new pattern* for the selling season then current rather than a customary one, we need not consider whether that pattern was distorted by the application of the highest price line provisions of RMPR 287. We conclude that the complainant has failed to bring itself within the second condition laid down in the last paragraph of Section 205(e). It follows that the Temporary Controls Administrator did not err in denying the complainant's application for relief under that paragraph." (Emphasis supplied.)

The Court below construed the term "pricing pattern" as follows:

"The pricing pattern to which the statute refers is the arrangement, design or outline of prices which a manufacturer has *fixed* and *published* * * *." (Emphasis supplied.)

The only place where the term "publication" is used or referred to in the Amendment is in subsection (1), which we quote in part:

"that the transactions on which such proceeding is based consisted of a manufacturer selling such an item *at his March 1942 price list prices.*"

The only place where the term "customary pricing pattern" is used in the Amendment is in subsection (2), which provides:

"that the seller's customary pricing patterns for related apparel items would be distorted by a requirement that his ceilings be the March 1942 delivered prices."

If the Emergency Court's construction that the pricing pattern had to be published, be correct, then the Emergency Court was in error in requiring that the pattern had to be published prior to March, 1942, because the statute clearly requires, and only requires, the publication of a March 1942 price list. If, on the other hand, the Congress intended the "pricing pattern" not to be a published price list, but the customary method or arrangement used by a manufacturer to arrive at his prices, then the Petitioner has satisfied such requirement.

The Congress used the words "customary pricing patterns," not the words "patterns of customary prices."

Since the issue is now restricted only to the "customary pricing pattern," Petitioner summarizes the evidence as to this issue only.

Petitioner for years has been a mass producer of low-cost clothing in high volume units. Its business is characterized by great quantities of production at all times. Deliveries for the Spring and Summer selling seasons in the challenged prices lines of $57, $60 and $66 per dozen, for instance, in 1942, aggregated 4020-9/12 dozens at gross dollar sales of $243,964.81; in 1943, 8853-3/12 dozen garments; in 1944, 6498½ dozen garments (236, Oct. Term, 1947. Sup. Tr. 4, *et seq.*) (See footnote.) Production of this magnitude must be budgeted and planned far in advance. Certified public accountants employed by Petitioner have rendered such service to it for many years. (R. Tr. 54, 60, 332 p. 79.)

On January 5, 1942, this customary budget practice was embodied in a report of S. D. Leidesdorf & Co. with re-

* References to the record in Case Number 236, Oct. Term, 1947, of this Court are made in this Brief for the reason that that record was incorporated into the record in this case by Order of the Emergency Court and includes the transcript, the supplemental transcript, and the Order Book. (R. Tr. 80.)

spect to the prices to be adopted in the $57, $60 and $66 per dozen price lines. The purpose of this report is summarized by the following excerpt:

> "The amount available for prime cost factors has been reduced to the percentages of billing prices to provide the management with a formula for pricing its lines to yield a 10% profit and to provide for estimated mark-downs and expenses. As the price lines have not been definitely established, it was not practical to project prime costs in amounts per dozen. The percentage basis, however, may be readily used to determine a profitable selling price for a particular garment, or, conversely, to determine the amount available for prime cost of a certain price range.
>
> The formula for computing the gross selling price (before discount) when the prime cost is known is as follows:
>
> Prime cost divided by 58 and multiplied by 100.
>
> To determine the amount available for prime cost, per dozen, for a certain price range, stated at gross selling price, the formula is as follows:
>
> 58% of gross selling price." (R. 49.)

Petitioner contends that the Leidesdorf report, prepared in the customary course of Petitioner's business, as similar reports had customarily been prepared in previous years, proved the existence of a customary pricing pattern. This was not challenged by the Administrator or by the Court, the Administrator contenting himself only to challenging the effectiveness of the formula in actual practice as to certain sty[illegible] (R. 129). The Court made no finding with respect [illegible] matters, but instead concluded that the "customary pri[illegible] pattern" requirement did not involve proof such as the Leidesdorf audit, but instead required proof that in previous years Petitioner had published and sold dresses at $57, $60 and $66 per dozen.

Reasons Relied Upon For the Allowance of the Writ.

This case involves the proper interpretation of the Amendment to Section 205(e) of the Emergency Price Control Act, above quoted.

This Amendment has never been before this Court in any proceeding. Dependent upon this Court's decision is an enforcement action of One and One-half Million Dollars presently pending against Petitioner in the District Court of the United States for the Northern District of Illinois, Eastern Division, as well as similar actions against similar manufacturers in other federal courts.

This Amendment to Section 205(e) was remedial in character, but as interpreted by the Court below, will be rendered meaningless, contrary to the clear intent of the Congress.

This case, therefore, involves an important question of federal law, which has not, but should be, settled by this Court, and which has been determined erroneously by the Emergency Court of Appeals.

SUMMARY OF ARGUMENT.

I.

The United States Emergency Court of Appeals has erroneously decided an important question of Federal Law which has not been, but should be, settled by this Court.

II.

Petitioner's case comes within the literal phraseology of the second requirement of the Amendment to Section 205(e).

III.

Resort to Legislative History not only is not necessary, but, if had, would reveal no legislative intent other than shown by the plain phraseology of the Amendment.

IV.

If there was any doubt as to the meaning of the Amendment and the purpose of Congress in passing it, a liberal construction was mandatory upon the Emergency Court because the Amendment was remedial in purpose.

V.

The misconstruction of the second requirement of the Amendment not only ignores the plain meaning of the phraseology employed but is entirely illogical.

VI.

The Emergency Court decided this case upon a point not raised or suggested by counsel for Respondent, and not referred to in the oral argument.

ARGUMENT.

I.

The United States Emergency Court of Appeals Has Erroneously Decided an Important Question of Federal Law Which Has Not Been, But Should Be, Settled by This Court.

Any consideration of the purpose and effect of the Amendment to Section 205(e) of the Emergency Price Control Act of 1946 might well begin with the consideration of Petitioner's position:

Petitioner is a manufacturer of apparel items, specifically women's dresses and like items, and has been so engaged for more than a quarter of a century. (R. 95.)

In the months of August and September 1941, prior to Price Control, and in the usual course of its business, it began the designing and planning of a line of women's cotton and synthetic fibre dresses to sell at prices of $57, $60 and $66 per dozen, respectively. (R. 107.)

Throughout Petitioner's history, it has been a mass producer of low-cost garments with high unit volume. Its production and its piece-goods requirements must of necessity be planned many months in advance. That procedure has been followed over the years. (R. 54, 66-332, p. 79.)

Accordingly, on January 5, 1942, S. D. Leidesdorf & Co., independent certified public accountants, prepared and delivered to Petitioner a budget report and pricing pattern with respect to the proposed $57, $60 and $66 per dozen lines. (R. Tr. 48.)

Petitioner began the sale of these lines of dresses about

January 1, 1942. By the end of March 1942, Petitioner had obtained and accepted bona fide non-cancellable orders for dresses in these price lines from customers throughout the United States. The total amount of these orders, 179 of which appear verbatim in this record, was substantially in excess of $100,000. (236, Oct. Term, 1947, Tr. 5, 10, 22, 24, 37, 73, and Exhibit Book 0001-0179.)

Petitioner committed these price lines to production in February 1942 and by March 30, 1942 had cut many thousands of dozens of these garments. (236, Tr. 5, 10, 14.) These steps were, of course, accompanied by substantial investments in labor and materials. Labor and material charges for the month of March, 1942 alone, applicable to these price lines, exceeded $42,000. Many dozens of dresses in these price lines were completed during March 1942 and were ready for shipment to customers. (236, Tr. 10-45, inc.) Commencing about March 28, 1942, customers selected garments for filling the orders which they had theretofore placed for these lines. (236, Tr. 11.) During and prior to the week commencing March 30, 1942, numerous customers of Petitioner came to the premises of Petitioner at 310 West Jackson Boulevard, Chicago, and inspected the merchandise there displayed, selected merchandise and supervised the shipping of them. (236, Oct. Term, 1947, Tr. 6, 19, 20, 46, 47, 50, 55, 56, 60.)

Because of the inadequacy of the new organization at 310 West Jackson Boulevard, set up specially to handle these price lines, bills to customers were not rendered until April 1, 1942. However, by April 6, 1942 in excess of $9,500 of merchandise had been billed and shipped to customers in the challenged price lines. Bills to over 80 customers were rendered on April 3, 1942; by April 8, 1942 in excess of $13,000 of invoices were rendered to customers, which were subsequently paid for and merchandise in the challenged price lines delivered to them.

The operation of these price lines was neither tentative nor small. For the entire Spring and Summer selling season of 1942, Petitioner delivered 2318¼ dozens of dresses in the $57 price line at gross dollar sales of $132,140.25; 90½ dozens in the $60 price line at gross dollar sales of $5,405.10; and 1612-5/12 dozens in the $66 per dozen price line at gross dollar sales of $106,419.46; total sales, therefore, for these three challenged price lines for the Spring and Summer selling season of 1942 aggregated 4020-9/12 dozens at gross dollar sales of $243,964.81. (236, Oct. Term, 1947. Sup. Tr. 4.)

Petitioner continued to sell in these price lines in 1943. In 1943 it delivered 8053-3/12 dozens at gross dollar sales of $535,158.23; in 1944 it delivered 6498½ dozens at gross dollar sales of $376,434.42; in 1945 it delivered 9179½ dozens at gross dollar sales of $573,412.76. This merchandise was sold under the trade name "Johnnye Juniors" throughout the United States. Extensive advertising was done by Petitioner to protect these lines and the trade name. (236, Oct. Term, 1947. Sup. Tr. 56.) These price lines were part of a complete line of garments which had to be sold by Petitioner to offer a complete line of junior dresses. (236, Oct. Term, 1947. Sup. Tr. 5, 6, 10-17 inc.)

R.M.P.R. 287 was issued by the Administrator of the Office of Price Administration on June 29, 1943. It forbade any manufacturer or seller in the apparel industry from delivering any garment in a price line higher than the highest price line delivered by him in the month of March, 1942. All of Petitioner's difficulties stem from this "delivery" requirement. Under the interpretation of R.M.P.R. 287, if Petitioner had delivered one single garment in the $57, $60 and $66 price lines on or prior to March 31, 1942, its right to thereafter sell in these price lines could not be challenged by the Administrator.

The fact that Petitioner had long prior to March 31, 1942, commenced the manufacture of items in these price lines, or the fact that prior to March 31, 1942, Petitioner had obtained bona fide non-cancellable orders, which were subsequently filled, for garments in these price lines, or the fact that during and prior to March, 1942, Petitioner had cut many thousands of dozens of dresses in these price lines for delivery to customers, or the fact that prior to March 31, 1942, Petitioner had completed many hundreds of dozens of dresses which were subsequently sold to, accepted and paid for by, the same customers, or the fact that Petitioner could (as shown by the record) prior to March 31, 1942, have made not a single delivery but many deliveries of garments in these price lines to customers on orders placed by them, or the fact that Petitioner, within 72 hours after March 31, 1942, had delivered hundreds of dozens of garments in these price lines to many, many customers, all of whom accepted the merchandise and paid for it—means nothing in Petitioner's position. From the viewpoint of the Administrator, the only basis upon which Petitioner is entitled to the challenged price lines is the requirement of a single delivery of one garment in each of the challenged price lines. Failing that, the Administrator claims Petitioner is liable in the amount of One and One-half Million Dollars.

Now, Petitioner was not alone in its difficulties with the physical delivery requirement. Similar problems had occurred in the work-glove industry. See *Bowles* v. *Good Luck Glove Co.*, 52 Fed. Sup. 942, 944, 945; *Bowles* v. *Indianapolis Glove Co.*, 150 F. (2d) 597. Also see testimony before House and Senate Committees Appendices to this Brief, p. 29 *et seq.*

The Amendment to Section 205(e) originated directly from these difficulties in the work-glove industry, which,

as the Court found below, were wholly identical, except as to the pricing pattern requirement as determined by the Emergency Court, with the position of Petitioner. Accordingly, the Congress provided that no enforcement action should be brought against any manufacturer of apparel items where that manufacturer had a published price list, where the basis of the action was the delivery by him of goods at his published price list price, as distinguished from his March 1942 delivered price, and where he could prove that the requirement that he delivered at his March 1942 delivered price, rather than his March 1942 price list price, would result in the distortion of his customary pricing pattern as to related apparel items.

The Court below found that Petitioner met all the requirements of the statute except what the Court conceived to be the "customary pricing pattern".

It is clear that the congressional requirement of a "customary pricing pattern" came from the work-glove industry where one of its spokesmen in a statement to the House Committee summarized the pricing pattern there prevailing as

> "It has been the practice and custom in the work-glove industry for more than 25 years to price work-gloves on a so-called base price, that is to say, when a work-glove manufacturer learns the cost of 8-ounce Canton flannel, then he computes his price for gloves made out of lighter or heavier flannel.
>
> In other words, from the price at which an 8-ounce Canton flannel glove will sell by a work-glove manufacturer, by adding to that price or subtracting from that price, certain differentials depending upon whether there are additions to or subtractions from the weight of the base glove, such as adding leather palm or gauntlet wrist or using a heavier or lighter flannel, the price for all other gloves is determined." (pp. 880, 881.)

The Korach pricing pattern was substantially similar. It was summarized as "a price policy predicated upon a pattern of related differentials based upon measurable differences in costs of construction and manufacture." (R. 66.)

The $45 per dozen dress would involve basic costs of $26.10. The $57 per dozen dress would involve basic costs of $33.06. The $66 per dozen dress would involve basic costs of $38.28. The differences in costs are accounted for only by differences in detail, particularly trimmings, buttons, decorations, belts, etc. (Tr. 66.) These costs were dealt with insofar as possible by the application of a predetermined formula of prime cost divided by 58 and multiplied by 100. (R. 49.)

Accordingly, Petitioner contended before the Court below, and contends here, that its pricing pattern met the congressional requirements. The Court below, however, held that what the Congress had in mind was not a pattern policy or method similar to that employed in the work-glove industry or in the case of Petitioner, but rather only the end prices. The Court concluded that since Petitioner had not published these prices in a price list published *prior* to March 1942, and had not sold in the $57, $60 and $66 price lines in previous Spring selling seasons, that Petitioner could not continue in these price lines, even though Petitioner had the pricing pattern from which these prices originated over a period of many years and even though Petitioner met the price list requirements of the Amendment to Section 205(e).

The decision of the Emergency Court on this important question of Federal law was obviously erroneous, as we shall see: First, in that it disregarded the plain language of the Act, which speaks not of "customary prices" but rather of a "customary pricing pattern"; Second, in that

it involves an interpretation contrary to the legislative history of the law; and, Third, in that it defeats the evident remedial purpose of the Amendment and leaves Petitioner and others like it in the position of facing potential liabilities running into millions of dollars, dependent upon the haphazard delivery or non-delivery of one single garment. That interpretation, moreover, has never been before this Court for review in any form whatsoever. Because of the importance of the question, Petitioner earnestly seeks that review.

II.

Petitioner's Case Comes Within the Literal Phraseology of the Second Requirement of the Amendment to Section 205(e).

The first requirement of the Amendment is:

> "(1) that the transaction on which such proceeding is based consisted of the manufacturer's selling such an item at his published March 1942 price list prices instead of his March 1942 delivered prices."

The Emergency Court conceded that Petitioner had met this requirement. It should be noted that that provision refers to the *prices of items.*

But, when Congress phrased the second requirement:

> "(2) that the seller's customary pricing patterns for related apparel items would be distorted by a requirement that his ceilings be the March 1942 delivered prices".

it did not refer to prices but to "the seller's customary pricing patterns." It recognized that pricing patterns were different from price list prices, and knew that the industry as a whole and probably each manufacturer had a pattern, or method, or formula, by which the price, from

time to time, of each particular item was determined by such manufacturer.

That pattern, or method, or formula, in the case of Petitioner and other manufacturers of apparel items, as well as members of the work-glove industry, consisted of adding to the "prime cost" a uniform percentage of mark-up (R. 49, 55). This pricing pattern was applied continuously before March 1942 as well as thereafter. The pattern never changed. The prices determined by the pattern varied from time to time, as the items of prime cost to which the percentage of mark-up was applied, varied from time to time.

If, in a given season, the cost of the highest priced item to be sold during that season was lower than during a previous season, the list price, after application of the uniform percentage of mark-up, would be lower than the highest list price of the previous season. And, if, in a given season, the cost of the highest priced item to be sold during that season was higher than during a previous season, the list price, after application of the uniform percentage of mark-up, would be higher than the highest list price of the previous season.

The items and prices change, but the pattern continues.

In both the apparel and the work-glove industries the list price of a basic dress or work-glove was determined by the above described pricing pattern or method and then uniform differentials, similarly determined, were added for each addition to the basic item.

What the Congress had in mind, and distinctly provided, was to prevent a distortion of the seller's *customary pricing pattern*. The distortion that would result if the seller's prices were limited to those at which he delivered an item or items in March, 1942, can be illustrated by the follow-

ing: Because the seller's ceiling was limited to the highest price that he received for any garment that he had delivered in March, 1942, in the entire Category 22, if he had not delivered the highest priced item he could only sell such item at a price equal to the highest price he charged for a delivered item in the category. Therefore, some items could be sold only at the seller's March, 1942 delivered prices (which prices would not be those arrived at as a result of the application of the seller's customary pricing pattern), while other prices published in the seller's price lists would be arrived at by the application of the seller's customary pricing pattern. Through the mere accident of non-delivery in March, 1942, a seller would be prohibited from selling an item at his March, 1942 published price list price and would not be able to furnish his trade his complete line. There would be unrelated gaps in the list of items permitted to be sold, due to the accident of non-delivery in March, 1942.

The Congress, to relieve from this evil (which was primarily called to its attention by the work-glove industry), intended to substitute for the ceiling otherwise fixed by the seller's March, 1942 delivered prices, a ceiling determined by his published price list in use during March, 1942, arrived at by the application of the seller's *customary pricing pattern*. The Congress intended to approve and enact into law the reasoning used by the Federal District Court in the case of *Bowles* v. *Good Luck Glove Company*, 52 Fed. Sup. 942, 944, 945, hereinafter quoted.

Nowhere is there indicated in the language of the Amendment or in the Reports of the Congressional Committees, that new items, the prices of which were arrived at by the application of a customary pricing pattern, were to be excluded from the benefits of the Amendment. Such construction is not warranted by the language of the Amendment, and is contrary to the evidence submitted at the Con-

gressional hearings where the work-glove industry set forth in its published price lists not only old items, but many *new ones,* and where the pricing pattern involved determined the prices of both old and new items, depending upon the greater or lesser cost of the items due to the addition to or subtraction from the basis work-glove of such items as a finger, guard or clasp. (R. 194, 195, 245-250.)

Judge Lindley, in *Bowles* v. *Good Luck Glove Company,* 52 Fed. Sup. 942, 944, 945, stated:

> "Defendant's products begin with a simple cotton flannel glove and from this basic form other models have developed. The basic gloves may be made of standard eight-ounce cotton or from a lighter or a heavier weight. As to gloves differing only in the weight of material, defendant has had for a number of years an established differential in prices, based upon the additional cost of material. The basic gloves may be made with a knit wrist, or with a gauntlet. Again the differential in cost and in the resulting selling price is a long-established one. A further step is to make the palm of the glove and the interior of the fingers of leather. This necessitates an additional item of the cost of leather over cotton flannel, but the gloves are identical otherwise. The leather palm glove is, in some models, changed by placing on the back a leather strap to protect the knuckles on the back of the hand; some models have a strap of leather below the cuff to furnish protection at the place of greatest wear. Some of the gauntlet cuffs are soft, some are stiff, designated starched, but the difference in cost is trifling, dependent upon the exact amount of added material or labor and is reflected in long-existing differentials. The models progress step by step from the basic cotton flannel glove. Some products are adapted to greater resistance of long wear. Each step from the preceding model is a short one of inconsiderable character and

reflects a fixed differential in cost of material and labor and in resulting selling prices."

"Defendant, in fixing its sales prices as to each article, has preserved at all times the same differential between the different models and it has in no instance charged more for its gloves than the prices quoted in the price list of March 20, prior to promulgation of the regulation, plus or minus the differential for similar or equivalent gloves. This results in consistency in price quotations. It avoids violation of the edict of Congress, obviously intended to prevent upsetting business practices, provided by Section 2(h) of the Act as follows: 'The powers granted in this section shall not be used or made to operate to compel changes in the business practices, cost practices or methods, or means or aids to distribution, established in any industry, except to prevent circumvention or evasion of any regulation, order, price schedule, or requirement under this Act.'"

These statements are equally applicable to Petitioner's case.

III.

Resort to Legislative History Not Only Is Not Necessary, But, If Had, Would Reveal No Legislative Intent Other Than Shown By the Plain Phraseology of the Amendment.

Petitioner agrees with the Emergency Court which stated:

"* * * provisions of the statute are clear enough on their face to make resort to their legislative history unnecessary * * *."

The legislative history in connection with the Price Control Extension Act of 1946 (79th Congress, 2nd Session) was mentioned and commented upon in briefs and oral

arguments in the trial before the Emergency Court of Appeals. It consisted of

Hearing before the Committee on Banking and Currency of the House of Representatives, on March 18, 1946;
Hearing before the Committee on Banking and Currency of the Senate, on May 2, 1946;
Senate Report No. 1431, Calendar No. 1458;
House of Representatives Report No. 2629;
House of Representatives Conference Report No. 2830;
Congressional Record, Vol. 92, No. 136, July 12, 1946, page 9009, containing the Amendment as passed.

In none of these proceedings or documents was there any discussion of any meaning of the phrase "the seller's customary pricing patterns for related apparel items" other than the plain meaning of such phrase.

The principal points discussed at the above mentioned Commitee Hearings were (1) that the glove manufacturers had raised prices in their March 1942 published price lists, but had filled prior orders at the lower prices shown on previous price lists, and (2) that representatives of the Office of Price Administration had assured them that such practise did not constitute violation of the regulation.

The excerpts contained in the Appendix hereto attached will show this to be true.

There was attached to the Complaint in the Emergency Court (Case No. 414), following page 62, a copy of the price list of March 21, 1942, of the Indianapolis Glove Company and the price list of December 20, 1941, of Universal Glove Company.

There was attached to the Petition for Rehearing in the Emergency Court the next previous price lists of said companies.

As shown on page 6 of said Petition for Rehearing, the

later price list of each of said companies contained old items at higher prices and new items at prices higher than the highest item of the previous list.

Petitioner's situation is an exact parallel.

IV.

If There Was Any Doubt as to the Meaning of the Amendment and the Purpose of Congress in Passing it, a Liberal Construction Was Mandatory Upon the Emergency Court Because the Amendment Was Remedial in Purpose.

The very language of the Amendment shows its remedial character—"The Administrator shall not institute or maintain any enforcement action."

There is a paradox in the action of the Emergency Court of Appeals in its interpretation of the customary pricing pattern requirement of the Amendment to Section 205(e). The plain effect of the Court's opinion is that a manufacturer is not entitled to the benefit of the Amendment unless he can prove that in the Spring and Summer selling season of 1941, and perhaps for years prior, he had sold in the challenged price lines. That evidently was not the intention of Congress since the sole price list to which the Congress referred was the March 1942 price list.

The paradox is that as to any manufacturer under R.M. P.R. 287 the sole base period was the month of March 1942—no earlier period. The effect of the opinion of the Emergency Court of Appeals, however, is to say to just this manufacturer that Congress sought to assist that "as to you the requirement is not March 1942, as it is to every one else, but some earlier period instead." Congress sought to substitute for the physical delivery standard the March 1942 published price list. The opinion of the Court means

that the very people whom the Congress sought to aid are now to be burdened with the added requirement of some price list or price a year and perhaps years earlier. If that interpretation is correct, these manufacturers are treated differently than their equals in similar circumstances and thus denied equal protection of law.

It is settled and familiar law that remedial legislation must be construed liberally in order to accomplish and effectuate relief against the evil involved.

The case of *Miller* v. *Robertson*, 266 U. S., 243, 248, 45 S. Ct. 73, 69 L. ed. 265, 271, was a suit against the Alien Property Custodian and others, to enforce a debt under Section 9 of the "Trading with the Enemy Act," Chap. 106, 40 Stat. at large, 411. The Court, at page 248 of the Official Edition, page 271 of the Law Edition, said:

> "1. Is plaintiff's claim a 'debt' within the meaning of Sec. 9 of the act?
>
> This section gives to 'any person, not an enemy, or ally of enemy * * * to whom any debt may be owing from an enemy, or ally of enemy' the right to 'institute a suit in equity in the district court * * * (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the * * * debt so claimed. * * * '
>
> This provision is highly remedial and should be liberally construed to effect the purposes of Congress and to give remedy in all cases intended to be covered. * * *
>
> The just purpose of the section is not to be defeated by a narrow interpretation, or by unnecessarily restricting the meaning of the word within technical limitations."

Lamur v. *Yates*, 148 F. (2d) 137, was an action by a tenant to recover treble damages under Section 205(e) of the

Emergency Price Control Act of 1942. The Court, at page 139, said:

> "All statutes must be given a sensible construction. The sole object of construction is to determine the legislative intent. Such intent must be found primarily in the language of the statute itself; but when the language is ambiguous or the meaning is doubtful, the court should consider the purpose, the subject matter and the condition of affairs which led to its enactment, and so construe it as to effectuate and not destroy the spirit and force of the law and not to render it absurd. * * *
>
> A remedial statute should be liberally construed to effect the purpose of Congress and to give remedy in all cases intended to be covered."

Sachs, et al. v. *Ohio Nat. Life Ins. Co.*, 131 F. (2d) construed a statute of limitation of the State of Illinois (Sec. 24 of Chap. 83 of the Illinois Revised Statutes of 1941).

Judge Lindley (who concurred in the opinion of the Emergency Court in the instant case), at page 137, said:

> "The act is remedial, reflecting a legislative intent to protect the party who brings the action in good faith from complete loss of relief on the merits merely because of procedural defect. Such remedial statutes should be liberally construed, so as to prevent destruction of the purpose of the legislation."

The Emergency Court of Appeals, in its opinion in the instant case, completely disregarded this well settled rule of construction, and completely disregarded the plain language of the Amendment, but, instead, gave to the Amendment a highly technical and entirely illogical meaning and refused relief to a manufacturer of apparel items, which admittedly came within the first requirement of the Amendment, by confusing the words "customary pricing pattern" with the words "published price list."

This clearly was a decision (and an erroneous decision) of an important question of Federal Law.

V.

The Misconstruction of the Second Requirement of the Amendment Not Only Ignores the Plain Meaning of the Phraseology Employed But Is Entirely Illogical.

As already pointed out, the Emergency Court failed to distinguish between "price list prices" and "pricing patterns." In the Order of January 2, 1948, two paragraphs of the original opinion were amended. In such amendment the Emergency Court stated:

> "The pricing pattern to which the statute refers is the arrangement, design or outline of *prices* which a manufacturer has fixed and *published* for a series of related apparel items. Thus in March 1942 the complainant's *published pricing pattern* for misses' and junior misses' dresses was $66, $60, $57, $45, $39, $36, $30 and $24 per dozen. But as far as the *prices* of $66, $60 and $57 were concerned there was not a *customary pricing pattern* since those particular *prices* had never previously been included in the complainant's list of prices for such garments for a spring selling season." (Emphasis supplied.)

If Congress had intended any such meaning, it would have phrased the second requirement so that it would have read:

> "and (2) that the seller's customary price list *prices* (not 'customary pricing *pattern*') for related apparel items would be distorted by a requirement that his ceilings be the March 1942 delivered prices."

This is further clarified by the fact that the only place the words "published price list prices" appear is in subsection (1) of the Amendment, and that this refers only to the *March 1942* price list.

Nor could the evil sought to be corrected by the Amendment be done away with by any such construction. R.M.P.R.

287 made delivery the test. The Court recognized that this test made every manufacturer's ceilings depend upon chance, but, nevertheless, held the regulation valid. Enforcement actions were brought, not only against Petitioner, but also against the large manufacturers of workgloves, asking triple damages.

Mr. Patrick J. Smith, Attorney for Indianapolis Glove Company, stated to the Congressional Committees that Indianapolis Glove Company had 500 different models, of which only 58 were delivered during March 1942. The remaining 442 models would have to be sold, no matter what the cost, at not more than the highest price of the 58 models actually delivered. (App. 29.)

So, Congress enacted the Amendment preventing prosecutions based on sales at March 1942 published price list prices. But that release from liability obviously required some limitation. If the manufacturer priced his various items by application of a definite pricing pattern, distortion would occur if his ceilings were controlled by his highest March 1942 delivered price. On the other hand, if the manufacturer fixed his prices without regard to costs and a uniform percentage of mark-up, he would suffer no actual distortion and would not receive the benefit of the Amendment.

VI.

The Emergency Court Decided This Case Upon a Point Not Raised or Suggested by Counsel For the Respondent, and Not Referred to in the Oral Argument.

While the Emergency Court, of course, had the right to decide this case upon any point it chose to adopt, it is evident that Respondent's counsel never supposed that the language of the second requirement of the Amendment could or would be so construed, or they would have urged the adoption of such a construction.

Conclusion.

In conclusion, Petitioner respectfully submits that this is a case which should be heard and determined by this Court in order that an important question of Federal Law be settled and that justice be done to Petitioner and other defendants in enforcement cases.

WHEREFORE, your Petitioner respectfully requests that a Writ of Certiorari be directed to the United States Emergency Court of Appeals to review the decision made by that Court in the case of *Korach Bros.*, a Limited Partnership, v. *Earl W. Clark,* Director of the Division of Liquidation, Department of Commerce.

SAMUEL E. HIRSCH,

JULIAN H. LEVI,
Counsel for Petitioner.

APPENDIX.

Hearing before House Committee held March 18, 1946.

Statement of Patrick J. Smith:

"My name is Patrick J. Smith. I am an attorney of Indianapolis, Ind. and together with other counsel represent certain work-glove manufacturers. Together we have drafted a sustained amendment to Sec. 925 of the Emergency Price Control Act, which amendment I will refer to again in the course of my statement. Prior, however, to any further reference to the amendment, I should like to give the Committee a brief background of what the proposed amendment to the statute seeks to do." (p. 879)

"Many of the work-glove manufacturers and all of those who are represented here, issued to the trade during March of 1942 a price list carrying increased prices for work-gloves.

All of the work-glove manufacturers represented here sold and delivered certain models of their work-gloves pursuant to such increased price during March of 1942, but did not sell and deliver each item of glove which they manufactured. In fact, it was probably physically impossible to do so. Take for example Indianapolis Glove Co. They manufactured substantially in excess of 500 different models of its work-gloves. Only 58 of these items were sold and delivered during March 1942 at the increased prices. This was true for several reasons:

(1) They had outstanding many prior commitments for delivery of gloves, some of which ran back to September, 1941.

(2) Many of the retailers who were purchasers from the manufacturer had stocked up when prices began to rise in 1941 on the more popular models of gloves in order that it have merchandise available for their trade.

Thus many of the manufacturers delivered during

March 1942 only a nominal number of their work-gloves at the increased prices as published by the lists of prices issued in that month.

It has been the practice and custom in the work-glove industry for more than 25 years to price work-gloves on a so-called base price, that is to say, when a work-glove manufacturer learns the cost of 8-ounce Canton flannel, then he computes his price for gloves made out of lighter or heavier flannel.

In other words, from the price at which an 8-ounce Canton flannel glove will sell by a work-glove manufacturer, by adding to that price or subtracting from that price, certain differentials depending upon whether there are additions to or subtractions from the weight of the base glove, such as adding leather palm or gauntlet wrist or using a heavier or lighter flannel, the price for all other gloves is determined." (p. 880, 881)

"Upon the basis of the long established practice and custom of the work-glove industry of in-line pricing, these manufacturers determined that the revised price lists of March 1942 pursuant to which some sales and deliveries had been made in March represented their highest prices charged for all items within the meaning of the regulation.

This practice was generally followed by the industry with the approval of the Office of Price Administration. In fact, one work-glove manufacturer represented here was assured by an Office of Price Administration official that its published March 1942 price list represented its lawful ceiling prices under the Regulation. Later the Office of Price Administration took the position that the practice was improper." (p. 881)

"In January of 1943 a representative from the Office of Price Administration called on the Indianapolis Glove Co. and after searching its books and talking with officials of the company, the representative assured the glove company that its pricing of gloves was in accordance with the Office of Price Administration regulation.

Nothing further was heard from the office of Price Administration until March 2, 1943, at which time the Indianapolis Glove Co. was notified that the prices

which it was then charging for certain of its work-gloves were in excess of the maximum prices established pursuant to the Emergency Price Act.

Upon receipt of this notice, Indianapolis Glove Co. discontinued the shipment of all gloves and went into further conferences with representatives of the O.P.A. As a result of these conferences, the Indianapolis Glove Co. on March 18, 1943 received a letter from the Office of Price Administration which will be referred to and quoted from by Mr. Elsey.

The Indianapolis Glove Co. continued to sell its gloves pursuant to the authority granted in this letter until August 28, 1943, at which time it received another letter from the Office of Price Administration repudiating the March 18th letter.

From August 28, 1943, the date of the receipt of the latter letter, Indianapolis Glove Co. shipped no gloves about which there was any controversy." (p. 882)

"Despite this letter of March and despite the assurances of the representatives of the Office of Price Administration given in January, the Office of Price Administration on Oct. 6, 1943, filed a complaint against the Indianapolis Glove Co. alleging that the glove company had exceeded its maximum prices by the sum of $50,000. and asked for triple damages.

An answer was filed and one of the defenses set up was the good faith of the glove company in carrying on of its business. After the answer was filed, the Office of Price Administration stipulated that it did not claim that the defendant in the sale of its gloves during the times referred to in plaintiff's complaint wilfully violated the regulation of the Office of Price Administration in respect of selling prices.

It was further stipulated that the Office of Price Administration did not dispute the defendant's contention that what the glove company did in the sale of its gloves it did in the belief that it had the right to do so under the applicable regulation.

The case was tried in the District Court of the U. S. for the Southern District of Indiana and judgment entered against the Office of Price Administration.

The Office of Price Administration appealed to the Circuit Court of Appeals at Chicago, which reversed the case on the basis of a decision of the Supreme Court of the U. S. in Seminole Rock & Sand case." (p. 882)

"After the decision by the circuit court of appeals, the glove company petitioned for a writ of certiorari. The petition was denied. The amount of penalties had not yet been determined.

Prior to the decision by the circuit court of appeals in the Indianapolis Glove Co. case, the circuit court of appeals had decided the Good Luck Glove case by affirming the lower court's judgment that there was no liability under the circumstances of that case.

Thus, in reality, we have this situation. The members of the work-glove industry construed the regulation and believed that they were pursuing their business in accordance with the provisions of the regulation and in this they were confirmed by the Office of Price Administration officials, as hereinbefore recited.

Two district court judges also thought they were. Initially, three judges of the District Court of Appeals believed that the industry was correct and it was not until the Rock & Sand case was decided by the Supreme Court of the U. S. that the contentions of the Office of Price Administration were sustained." (p. 883)

"As a matter of fact, four such suits are now pending where the Office of Price Administration is seeking thousands of dollars in penalties against these people. These attacks on the work-glove industry by the Office of Price Administration have been made on work-glove manufacturers producing about 90% of all work-gloves.

This amendment, if passed, will do only two things: First; in those cases where the violations were nonwilful and where practical precautions were taken to avoid a violation, the damages and penalties will not be assessed. Second, in those cases where there has been no wilful violation and practical precautions have been taken and the penalties have been paid, it will permit a claim for refund to be filed with the Court of Claims. This we believe to be the intent of Congress." (p. 883)

Hearing before Senate Committee held May 2, 1946.

Statement of Patrick J. Smith:

"All of the work-glove manufacturers involved herein issued to the trade during March of 1942 their regular quarterly price lists, which carried increased prices for work-gloves.

All of the work-glove manufacturers involved herein sold and delivered certain styles of their work-gloves pursuant to such increased price during March of 1942, but did not sell and deliver each style of glove which they manufactured. In fact, it was probably physically impossible to do so. The Indianapolis Glove Co. manufactured substantially in excess of 500 different styles of work-gloves. Only 58 of these styles were sold and delivered during March, 1942 at the increased prices. This was true for several reasons.

They had outstanding many prior commitments for delivery of gloves, some of which ran back to September 1941.

Many of the retailers who were purchasers from the manufacturer had stocked up, when the prices began to rise in 1941, on the more popular styles of gloves in order that they would have merchandise available for their trade." (p. 1517)

"It has been the practice and custom in the work-glove industry for more than twenty-five years to price work-gloves on a so-called base price; that is to say, that when a work-glove manufacturer learns the cost of 8-ounce canton flannel, then he computes his price for gloves made out of lighter or heavier flannels." (p. 1517)

"After general maximum price regulation was promulgated, various work-glove manufacturers studied their records of sales and deliveries made during March, 1942.

Pursuant to the long-established business practice and customs of the work-glove industry of differential pricing, these manufacturers concluded that the revised price lists of March, 1942 represented their highest

prices charged for all styles within the meaning of the law and regulation.

This practice was generally followed by the industry with the knowledge and affirmative approval of the Office of Price Administration. In fact, one work-glove manufacturer represented here was assured by officials of the Work Clothing Unit Division of the Office of Price Administration that its published March 1942 price list represented its lawful ceiling prices under the law and regulation.

The Indianapolis Glove Co., after the issuance of general maximum price regulation, had many consultations with other members of the work-glove industry and representatives of OPA in Washington, and OPA confirmed the earlier conclusion which the industry had reached." (p. 1518)

"In January of 1943, a representative from the OPA called on the Indianapolis Glove Co., and after searching its books, examining many styles of work-gloves and customers' invoices and after talking with officials of the company, the representative assured the company that its pricing structure was in accordance with the law and applicable regulations.

Nothing further was heard from OPA until March 2, 1943, at which time Indianapolis Glove Co. was notified that the prices which it was then charging for certain of its work gloves were in excess of the maximum prices established pursuant to the Emergency Price Control Act, though there had been no change in prices since March, 1942." (p. 1518)

"Despite this letter of March and despite the assurances of the representatives of the OPA given in January, the OPA on October 6, 1943, filed a complaint against the Indianapolis Glove Co. alleging that the company had exceeded its maximum prices and asking for triple damages in the sum of $150,000. Mind you, the suit covered the period of twelve months beginning October 7, 1942, during all of which period the company was operating under assurances from OPA officials heretofore recited." (p. 1519)

"Corresponding litigation was instituted against Boss Mfg. Co., Wells Lamont Corp., and Good Luck Glove Co. These four companies sued, manufacture more than half of all work-gloves produced. The claims for triple damages aggregate three-quarters of a million dollars. All of these cases are still pending.

In two of these cases, two separate United States District Courts agreed with the manufacturers. In one the Circuit Court of Appeals agreed initially, but subsequently felt constrained to reverse itself because of a decision of the Supreme Court which passed on a definite regulation dealing with sand and gravel and on wholly different facts." (p. 1519)

"In the entire field of law, the genesis of liability is a wrong or fault. This applies to all actions whether based on the common law or statute, and whether sounding in contract, tort, or in criminal or administrative proceedings.

In the four law suits mentioned the OPA has disregarded this fundamental principle and has asserted liability where neither wrong nor fault exists. Such attempt is not only grossly unfair to these defendants but involves the integrity of the whole administrative process and the administration of justice." (p. 1519)

"Actually the work-glove ceiling prices as insisted upon by OPA in this litigation favor that individual who repudiated all previous contractual obligations and confined his deliveries in March, 1942 to current purchasers. The manufacturer who honored his previous contracts incurs all the penalties. In many instances, higher quality merchandise must be sold at lower prices than lower quality merchandise. There were numerous other distortions impossible to have foreseen.

Sen. Taft: If you put out for March, 1942, price list and if you happened in March to ship a particular kind of glove under that price list, then that was the price for all time to come. If you didn't happen to ship under that price list, but if you happened to ship under a previous contract on the basis of the previous year, then that became the highest price?

Mr. Smith: That is correct.

Sen. Taft: So that the result was that the higher-priced glove could have a ceiling price below a lower-priced glove.

Mr. Smith: That is correct; and that has happened many times in the industry." (pp. 1519, 1520)

"In our particular case, in March, 1942, we were making deliveries under prior commitments based on prices which prevailed in November and December of 1941. None of the people in the glove industry felt it advisable to repudiate their prior contracts. If they had they could have made current shipments in March of 1942 at increased prices.

Sen. Taft: Nobody could have come in after March, 1942 and bought from you any gloves except at the higher prices?

Mr. Smith: That is correct; yes." (p. 1520)

"Sen. Taft: Does this dollars-and-cents ceiling business substantially recognize your 1942 prices as being correct?

Mr. Smith: I could not say with respect to each particular price, but I am advised that MPR 506 fixes a price that equals or exceeds in almost every instance the price at which these glove manufacturers sold in March of 1942.

Mr. Mason: Our MPR 506 in general exceeds prices of 1942.

Sen. Capehart: Does it likewise exceed the prices under which they are suing you for triple damages?

Mr. Smith: Oh, yes. They are suing us in some cases on our December and September 1941 prices.

Sen. Capehart: They permitted a ceiling higher than that upon which they are suing you and asking triple damages?

Mr. Smith: That is not true of each of the 800 styles, but it is true of a great majority." (p. 1521)

"We appeared before the Banking & Currency Committee of the House and made the same proposal for amendment and substantially the same presentation being made here today. At the conclusion of that hear-

ing certain members of that Committee made comments indicating that their sense of fairness and justice had been shocked. At a subsequent hearing a member of the Committee made the following statement to a high official of OPA. I quote from page 1771 of the transcript. Referring to these four lawsuits he said (reading):

'It is the most outrageous case that has been presented to this Committee and surely is not conducive to the support which Mr. Porter says must be given to the OPA enforcement by business in general, if we are going to make a success of this.'

Again

'I just cannot justify things like that, and you cannot justify cases of that nature.'

To which statement the OPA official replied:

'There are certainly aspects of this case which are extremely unfortunate, if true—'.

I assure you, gentlemen, that there is no question of the facts. Again on page 1772 I find this stated by a Committee member (reading):

'If that had not been, if they had disregarded their commitments and their contracts and not delivered these goods, they would not have been in violation of this regulation. I was just thinking that they were doing what men had to do to fill their contracts.'

To which statement the OPA official replied 'Certainly'.

Encouraged by the attitude of the members of the House Committee, some of whom urged us to do so, we sought to confer with OPA officials looking to some amicable adjustments of the four lawsuits. Numerous trips to Washington have been made and several conferences have been held with enforcement officials of OPA, at one of which Mr. Porter was present. We were assured that the problem would be given prompt consideration and have been told repeatedly that the matter was still under discussion in the agency. Up to this time no action has resulted.

These manufacturers have pursued judicial and ad-

ministrative procedures without success. Their only remaining avenue is the Congress." (pp. 1521, 1522)

"We think that OPA in its characterization of these cases has hit the nail squarely on the head in a conference which we had. They were characterized as horror cases. We think that is apt." (p. 1523)

Senate Report No. 1431 (June 7, 1946).

After reference to Sub-section (a) and the first paragraph of Sub-section (b), the report states:

"The second paragraph of this subsection is designed to forbid the institution or maintenance of an action by the Administrator in a situation like that brought to the attention of the committee by representatives of the work-glove industry. Suits are pending against several members of this industry under circumstances which in the judgment of the committee do not warrant the maintenance of an action. The amendment forbids enforcement action where the Administrator determines (1) that the violation consisted of an apparel manufacturer's selling an item at his published March 1942 price list prices instead of his March 1942 delivered prices, and (2) that his customary pricing patterns for related apparel items would be distorted by a requirement that his ceilings be the March 1942 delivered prices."

House Report No. 2629 (July 22, 1946) is identical with Senate Report except that it begins with "The last paragraph of this sub-section" instead of "The second paragraph of this sub-section."

The Conference Report No. 2330 (July 24, 1946) simply quotes the phraseology of the Amendment as adopted.